United States General Accounting Office

GAO

Report to the Deputy and Acting Chief Executive Officer, Resolution Trust Corporation

July 1994

RESOLUTION TRUST CORPORATION

Better Analyses Needed Before Terminating Asset Management Contracts

GAO

United States
General Accounting Office
Washington, D.C. 20548

General Government Division

B-256421

July 8, 1994

Mr. John E. Ryan
Deputy and Acting
Chief Executive Officer
Resolution Trust Corporation

Dear Mr. Ryan:

The Resolution Trust Corporation (RTC) hired private sector contractors, under Standard Asset Management and Disposition Agreements (SAMDA), to manage and dispose of assets from failed institutions. RTC reports that as of October 1993, nearly $24 billion in assets were assigned to 300 SAMDA contracts. In April 1993, RTC established the Accelerated Expiration Program to reduce its administrative costs by selectively terminating SAMDA contracts before their original expiration date. By April 1994, RTC no longer terminated contracts in advance of their scheduled expiration dates. As RTC's sunset approaches and all SAMDA contracts near expiration, the experiences RTC gained from the Accelerated Expiration Program should help ensure that its procedures for closing other SAMDA contracts protect RTC's interests.

Our objectives were to (1) assess the cost effectiveness provisions of RTC's Accelerated Expiration Program procedures, and (2) determine whether these procedures ensured that SAMDA contractors satisfactorily met their contractual obligations before their contracts expired. We reviewed all six SAMDA contracts for which RTC and the contractor had signed accelerated expiration agreements as of June 30, 1993.

Results in Brief

RTC's Accelerated Expiration Program procedures did not ensure that RTC made cost effective decisions that were in its best interests. Although the program procedures required a written justification that accelerated expiration of a contract was in RTC's best interests, RTC had not estimated program benefits or analyzed related costs. We analyzed the fees and expenses associated with the accelerated expiration of six SAMDA contracts and determined that the decisions to terminate three of these contracts without remaining assets did not expose RTC to increased costs. However, for the three contracts with unsold assets, we determined that RTC would increase its costs by about $241,000 by accelerating their expiration. The increased costs were mostly attributable to RTC's waiving a SAMDA contract provision that states that RTC may recover certain costs attributable to unsold assets. We believe an analysis of the related costs and benefits of accelerating the expiration of SAMDA contracts with unsold assets would have assisted RTC in determining whether these actions were in its best interests.

Furthermore, although the Accelerated Expiration Program procedures included final contract reviews by independent auditors to determine whether the SAMDA contractors met their obligations, these reviews have been hindered. At the time of our work, independent auditors had completed final reviews for four of the six contracts that we reviewed. According to the audit reports, the reviews were hindered because the SAMDA contractors did not have adequate records and some of the costs charged to RTC were based on unofficial contract interpretations made by local RTC oversight managers. As a result, the auditors did not have all the necessary documents and data needed to (1) provide assurance that SAMDA contractors complied with the contractual requirements and (2) determine whether any funds were due to RTC. In addition, few of the recommendations from the final reports were implemented because RTC officials believed that RTC's numerous contract interpretations made strict adherence to the recommendations impractical.

RTC can remove the obstruction to the completion of the independent auditors' final reviews by requesting that its SAMDA oversight managers work with contractors to ensure their record keeping practices comply with contract requirements prior to the independent auditors' final reviews. It is important that RTC incorporate these changes before other SAMDA contracts expire. Otherwise the process of concluding SAMDA contracts could result in unnecessary costs, and RTC would not know if SAMDA contractors have fulfilled their obligations.

Background

RTC is responsible for managing and disposing of assets from failed thrifts and maximizing the recoveries from the sale of such assets. RTC relies heavily on private sector contractors, primarily through SAMDA contracts, to manage and dispose of assets under its control. RTC pays SAMDA contractors a monthly management fee based on the remaining value of the assets in their portfolio. The SAMDA contract also requires that RTC pay all of the expenses associated with the assets for certain services and items such as taxes, property management fees, maintenance costs, utility charges, and rental or sales costs.

When an asset is removed from the inventory through a sale or other disposition, RTC pays the SAMDA contractor a disposition fee. The SAMDA contractor may also earn an incentive fee if an asset is sold within 2 years of the contract's effective date. The SAMDA contract also states that RTC shall retain 15 percent of the disposition and incentive fees as the assets are sold. The retained money, known as the "retention fund," enables RTC to recover certain expenses for assets unsold at the time the contract expires or terminates. When the contract expires, all assets are sold or transferred to another manager and, if the contractor does not owe RTC any other money, the amount remaining in the retention fund is paid to the contractor. The contract further states that the contractor will have no obligation to reimburse RTC if the amount in the retention fund is less than RTC's recoverable expenses.

SAMDA contracts were structured for a 3-year term and do not contain a provision to terminate the contract early, except for cause.[1] On November 4, 1992, when the oldest of the SAMDA contracts were just beginning their second year, RTC established a goal to dispose of 90 percent of the assets covered under SAMDA contracts by the end of 1993. Also, RTC planned to greatly reduce the number of SAMDA contracts. As a result, RTC expected to reduce its administrative burden since there would be fewer contracts to administer. The Accelerated Expiration Program procedures were issued on April 1, 1993, to help consolidate the contracts in preparation for meeting the 90-percent disposition goal. Although this goal was eliminated on April 30, 1993, the Accelerated Expiration Program continued. In April 1994, RTC said that it no longer terminated SAMDA contracts in advance of their scheduled expiration dates.

The Accelerated Expiration Program allowed, by mutual agreement of RTC and the contractor, for the early termination of SAMDA contracts. In order to participate in the program, RTC required that the contractors have (1) resolved any disputes or defaults with RTC and (2) significantly reduced the number of assets under the contract. The Accelerated Expiration procedures provided three options for transferring remaining assets from the expiring SAMDA contract. Assets could have been

- transferred to another existing SAMDA contract if they were complex or difficult to sell;

[1]Examples of cause specified in the SAMDA include the contractor (1) filing false claims under the SAMDA contract, (2) filing a petition for bankruptcy, or (3) defaulting in its performance of the agreement.

- targeted for RTC sales initiatives, such as portfolio sales or auctions, and transferred to Standard Asset Management Agreement (SAMA) contracts;[2] or
- transferred to RTC if those assets required little or no management, such as assets under sales contracts that had not yet closed.

Before termination of any SAMDA contract, RTC's Office of Contractor Oversight and Surveillance (OCOS) is to hire independent auditors to perform reviews of the SAMDA contractors' records and practices. OCOS developed a standard work program for the independent auditors to follow when performing the final expiration reviews. The auditors are to provide the results of their reviews to OCOS who will issue a final report to the SAMDA program officials. RTC is not to release the retention fund until after the final OCOS review is completed and the SAMDA Program Office, the Office of Contracts, and the Legal Division have agreed on the amount to be released.

In June 1993, RTC estimated 40 SAMDA contracts qualified for the Accelerated Expiration Program. As of December 1993, less than 10 contracts remained in the program, with 6 contracts completing the program. According to RTC officials, the Accelerated Expiration Program has not been used as extensively as anticipated because (1) the 90-percent disposition goal was eliminated and, as a result, RTC's managers did not have an incentive to recruit SAMDA candidates; (2) RTC did not accept all candidates in the program; and (3) some of the contracts would have expired automatically before the accelerated expiration process could be completed. Even though the Accelerated Expiration Program has had limited use, lessons learned from this process can be applied as RTC develops procedures to manage the expiration of other SAMDA contracts.

Objectives, Scope, and Methodology

The objectives of our review were to (1) assess the cost effectiveness provisions of RTC's Accelerated Expiration Program procedures and (2) determine whether the procedures ensured that SAMDA contractors had satisfactorily performed their contractual obligations before their contracts expired.

To identify and assess the Accelerated Expiration Program procedures, we reviewed the related program policies, procedures, manuals, memos, and directives. We discussed the program procedures and goals with RTC

[2]SAMA contracts limit the contractors' responsibilities to managing the assets. RTC is responsible for disposing of the assets.

headquarters and field office officials, as well as with SAMDA contract personnel.

We determined that there were six SAMDA contracts that either had agreements for accelerated expiration as of June 30, 1993, or had been completed through the early expiration process. We attempted to analyze the related costs and benefits associated with the accelerated expiration of these six SAMDA contracts. However, RTC policy did not require an estimate of any benefits derived from early termination and accordingly no such data were available for our review. Therefore, instead of analyzing the costs and benefits, we compared the management and disposition fees associated with the original contracts with the replacement contracts, and calculated the expenses associated with transferring the unsold assets to other contracts.

For three of the accelerated contracts, all assets were disposed of before their original expiration date; therefore, we did not make a fee comparison. For the other three contracts with unsold assets, we compared the fees of the original contracts to the fees associated with transferring the assets to other contracts, as of June 30, 1993. In making these comparisons, we relied on either RTC's or the new contractors' data and estimates of disposition amounts and sales dates. For example, RTC estimated that none of the assets transferred from the three contracts would be sold before the original contractors' expiration dates. Therefore we used the expiration dates of the original contracts to calculate the management and disposition fees based on the rates of the original and replacement contracts.

For about half of the assets, the original contractor estimated disposition recoveries or losses, which we used to calculate disposition fees. For those assets without contractor estimated recoveries or losses, we calculated the disposition fee based on the assets' estimated recovery values assigned by RTC. On the basis of discussions with the SAMDA contractor for the one contract where incentive fees may be earned within 2 years of asset transfer, we estimated the assets would sell in the second year, and thus the replacement contractor could receive a 10-percent incentive fee.

We also compared the recoverable expenses attributable to unsold assets in the accelerated expiration contracts with the balance of the retention fund. We collected and examined SAMDA contractor expense reports to determine the expenses associated with the unsold assets remaining in three contracts. We obtained data on the amounts held by RTC in a retention fund for each contract we reviewed. We discussed our methodology for comparing the retention fees and analyzing the expenses with RTC officials, who agreed with our approach.

To assess RTC's procedures for ensuring that contractual requirements were satisfactorily met, we reviewed the four completed final review reports done by independent auditors from OCOS. We reviewed the OCOS work program and compared that to the scope of the OCOS review reports. We also discussed the final review process and the report results with OCOS and SAMDA headquarters' officials.

We did our work at RTC Headquarters in Washington, D.C., and RTC's six field offices in Atlanta, GA; Dallas, TX; Denver, CO; Kansas City, MO; Newport Beach, CA; and Valley Forge, PA. We also visited two SAMDA contractors with contracts in the Accelerated Expiration Program and spoke with three SAMDA contractors who received assets from expiring SAMDAS. Our review was conducted between March 1993 and December 1993 in accordance with generally accepted government auditing standards.

In April 1994, RTC provided written comments on a draft of this report. These comments are addressed on pages 13 and 14 and are reprinted in appendix I.

RTC's Accelerated Expiration Procedures Did Not Require an Analysis of Costs and Benefits

Under its Accelerated Expiration Program, RTC did not require an analysis of the costs and benefits associated with accelerated expiration. We determined that for the three accelerated expiration contracts with unsold assets, the unrecovered expenses and additional costs incurred would have been about $241,000. Although RTC stated that reduced administrative costs would occur as a result of its early termination program, it did not collect data on potential savings. RTC also did not recover costs attributable to unsold assets for two of these contracts because RTC waived this provision under the Accelerated Expiration Program. For the third contract, RTC put the unsold assets into other existing contracts with higher fees.

Even though a detailed cost analysis was not required, RTC's procedures required a written justification to accelerate expiration of a SAMDA contract. This justification must indicate that accelerated expiration of the contract would be in RTC's best interests. Written justifications were prepared for each of the contracts we reviewed. The justifications stated that accelerated expiration would be in RTC's best interests because RTC would have fewer oversight responsibilities and save administrative costs. Also, the justifications stated that continuation of the contracts would not be cost effective for either RTC or the contractor.

However, these statements were not supported by an analysis of estimated costs and benefits of early contract expiration. For example, we found that RTC did not compare the estimated costs of waiving the right to recover expenses associated with unsold assets against potential administrative cost savings from reduced RTC staffing for contract oversight. Further, RTC did not quantify or analyze the administrative cost differences and could not demonstrate any net savings in administrative costs that occurred as a result of accelerated expiration.

We analyzed the contractor fees and unsold asset expenses associated with accelerating the expiration of the three contracts with unsold assets and estimated that RTC would incur additional costs of about $241,000. RTC did not recover previously paid expenses associated with the unsold assets, as provided in the SAMDA contract. The SAMDA contracts we reviewed stated that RTC may recover certain costs attributable to assets unsold at the time of expiration or termination of the contract up to the amount retained by RTC. According to the SAMDA contract, upon expiration or termination of the contract, RTC is to calculate (1) the total amount of all money retained and (2) the total management fees, costs of mandatory subcontracting, imputed carrying costs, legal costs, and asset file reproduction costs paid for all unsold assets. RTC is to deduct such costs from the retention fund and promptly pay the contractors any remaining money. The contract further states that the contractor shall have no obligation to provide additional reimbursements to RTC if the amount retained is less than the total expenses associated with unsold assets.

The contract provision for recovering expenses for unsold assets was enforced for one of the three contracts we reviewed. For this contract, the expenses for the unsold assets were about $2,900 and RTC recovered all of these costs from the $13,308 in the retention fund. However, RTC incurred an additional estimated $960 in fees on this accelerated expiration because of the costs incurred in transferring the assets. The accelerated expiration of this contract was completed October 31, 1992. However, in March 1993, RTC began waiving the expense retention provision as an incentive to encourage contractors with unsold assets to participate in the program. Specifically, RTC's manual for the early termination program states that waiving the retention provision is a considerable benefit provided to a contractor with unsold assets that agrees to an early expiration of its contract under the Accelerated Expiration Program.

For the other two contracts that we reviewed with remaining unsold assets, RTC waived the retention provision. For the first contract, since the retention fund contained $188,099 and the unsold asset expenses were $182,250, RTC could have recovered the full amount of the expenses. For the second contract, since the retention fund contained $64,647 and the unsold asset expenses were $264,334, RTC could have recovered $64,647 out of the total $264,334 in the retention fund. In total, RTC could have recovered $246,897 if it had not waived the retention provision.

According to the SAMDA program manager, waiving the retention provision is a necessary incentive to get the contractor to volunteer for early expiration. Further, RTC field office officials suggested that RTC should decide whether to waive the retention provision only after reviewing each asset's history. Such a review would be needed to determine the costs associated with each unsold asset and whether there had been mitigating circumstances that hindered the contractor's ability to sell the assets. For example, if the contractor recently received assets and was unable to dispose of an asset because RTC was unable to resolve legal matters, then waiving all or a portion of the expense provision could be a fair closure of the contract for both RTC and the SAMDA contractor.

In addition to the uncollected expenses, we determined that the contractor management and disposition fees increased for one contract when the assets were transferred to another contract with higher fees. For this contract, on the basis of discussions with the original and replacement contractors, we estimated that the fees would increase by about $960. Although we estimated that the fees for the other two contracts could decrease by about $6,000, RTC did not analyze the fee differences prior to making decisions for any of the three contracts. Without determining differences in fees attributed to transferring assets from the original contract to a replacement contract, RTC did not know whether the decisions to accelerate these contracts increased or decreased its costs. As a result of not analyzing costs, RTC was placed at an unnecessary financial risk.

Table 1 shows the fee differences, funds not recovered, and the costs or savings we estimated for accelerating the three contracts with unsold assets that we reviewed.

Table 1: Analysis of Costs for Accelerating the Expiration of Three SAMDA Contracts

Contracts with unsold assets transferred as of June 30, 1993	Estimated fee (cost) or savings	Retention fund balances	Unsold asset expenses	Retention funds not recovered	Estimated (cost) or savings of accelerated expiration
Contract A	$(960)	$13,308	$2,844	$0	$(960)
Contract B	1,539	64,647	264,334	(64,647)	(63,108)
Contract C	4,823	188,099	182,250	(182,250)	(177,427)
Total	**$5,402**			**$(246,897)**	**$(241,495)**

Note: Parentheses indicate costs.

Source: RTC and contractor estimates and reports.

Although some cost factors such as administrative oversight may be difficult to precisely quantify, the decisions to accelerate the expiration of SAMDA contracts should have considered known costs and benefits, such as contractor fees, previously paid asset expenses, and costs of a replacement contractor. Without an assessment of these costs, RTC could not make well-informed decisions or have been assured that these decisions were in RTC's best interests.

Numerous Contract Interpretations and Poor Contractor Records Hindered Final Reviews

Reports from RTC's independent auditors found that SAMDA contractors' inadequate accounting practices, lack of records, and practices based on varying RTC contract interpretations hindered the final contract reviews. Of the six accelerated expiration contracts we reviewed, final review reports were completed for four. All four of these reports noted difficulties in completing the reviews because of poor record keeping, inadequate accounting practices, and numerous contract interpretations by SAMDA contractors. Because of these three factors, the independent auditors said they could not provide assurance that the contractors had complied with the contractual requirements and had paid all funds due to RTC.

RTC's OCOS requires a final review of all SAMDA contracts before contract termination. The review, which consists primarily of sample-based testing, is to provide an analysis of the accuracy, appropriateness, and timeliness of (1) all asset activity in the contractor's records, (2) deposits and collections, (3) reimbursed expenses and noncash transactions, and (4) calculations and fee payments (management, disposition, and incentive). OCOS hired independent auditors to complete these reviews.

The auditors reported in the four completed audit reports that poor contractor record keeping and numerous contract interpretations affected their ability to complete the final expiration review objectives. Further, because the contractors did not agree with the findings, RTC had fully implemented only 9 of the 31 recommendations as of the time we completed our work.

Although SAMDA requires that contractors maintain complete and accurate business records to document all matters related to their contracts, all four of the final reports noted the auditors' difficulty in obtaining adequate records and reconciling the records during the final reviews. For example, one audit report stated that a contractor did not have a general ledger, a cash receipts or cash disbursement journal, and had a major accounting internal control weakness. In order to complete the early expiration review, the auditors had to assemble the accounting records and supporting documents before doing the review. The accounting firm charged RTC an additional $13,685 in fees to summarize the accounting transactions. For another contract, the audit report stated that the contractor's final reconciliation report did not include all assigned assets.

In addition to the record keeping problems, the audit reports noted that numerous contract interpretations hindered the final reviews. Over 200 official interpretations, which are applicable to all SAMDA contracts, were made by the RTC's SAMDA Interpretation Committee.[3] In addition, the SAMDA Program Manager and the OCOS Director told us that numerous unofficial interpretations were made by local RTC oversight managers. For example, one report noting unofficial interpretation problems stated that "the contractor submitted all 1992 management fee billings assuming the assets were managed for the entire month in the month of disposal." The contractor did not reduce the billings for the portion of the month assets were not managed. The contractor stated that a former RTC oversight manager instructed him to calculate the management fees in this manner. However, we could not confirm this statement. According to the OCOS director, the auditors cannot be expected to familiarize themselves with all interpretations by the SAMDA Committee and the unofficial interpretations can rarely be confirmed during the final reviews.

The 4 final OCOS review reports contained 31 recommendations, which primarily addressed internal control and financial matters. For example, one recommendation stated that following RTC sales initiatives, such as auction and portfolio sales,

[3]The SAMDA Interpretation Committee was established to clarify the SAMDA agreement.

"we recommend the RTC furnish the contractor information relating to the sales prices and dates sold so that the disposition and incentive fees can be computed and billed."

Another recommendation stated that

"we recommend the contractor recalculate management fees for 1991 and 1992 using the proper method of adjusting the estimated recovery value as of the sale date of assets sold. We further recommend that the contractor correct the overstated estimated recovery value beginning in August 1991."

Another recommendation addressed the need to separate incompatible duties. The report stated that

"the basic accounting premise is that no one employee should have access to physical assets (and the related accounting records), or to all phases of a transaction."

RTC's policy manual for accelerated expiration of SAMDA contracts does not address final review recommendations. We determined that in the 4 OCOS reviews, 9 of the 31 recommendations were implemented as suggested by OCOS. Most recommendations were not implemented because the contractor did not agree with the finding. For example, one report stated that

"during the course of conducting the expiration audit, we noted from the sample of transactions tested, instances wherein disposed assets were not removed from the estimated recovery value (ERV) on a timely basis."

The report recommended that RTC require SAMDA contractors to implement procedures for removing disposed assets from the ERV calculation as of their sale date. In response the contractor stated that

"The date the disposition fee is received is the date that is used as the asset sale date. A decision should be made as to what constitutes the asset sale date."

A memorandum issued on April 30, 1993, required SAMDA oversight managers to respond to the final review recommendations in writing. Specifically, the oversight managers are to identify the specific, corrective action that has been taken or explain why they believe that the OCOS finding is incorrect (e.g., an incorrect interpretation of RTC policy, procedures, or SAMDA provisions). At the time we completed our audit work, we determined that the oversight managers were not preparing written responses. Oversight managers and contract specialists said that they used the recommendations from the four completed audit reports as negotiation mechanisms because numerous interpretations of the SAMDA contract made strict adherence to recommendations impractical.

Because of the poor record keeping by SAMDA contractors and the numerous interpretations of the SAMDA contract, these final reviews cannot assure RTC that the SAMDA contractors have satisfactorily performed their contractual obligations. Although many of the problems stem from practices that occurred during the operation of the contracts, RTC has taken some action to address the problems associated with unofficial interpretations by oversight managers. On April 7, 1993, RTC issued a directive that stated that oversight managers' interpretations of the SAMDA contract were no longer acceptable. This directive should alleviate future problems with the final reviews because of unofficial contract interpretations. RTC could help address the documentation problems by working with its contractors and helping them summarize their records prior to the final reviews.

Conclusions

RTC accelerated the expiration of SAMDA contracts without knowing whether these decisions were cost effective. RTC did not assess the cost of waiving the contract retention provision regarding collection of previously paid expenses for unsold assets or compare the fees associated with transferring assets to other contracts. Although RTC said that there were several benefits to be gained by accelerating the contracts, it did not attempt to measure these benefits or compare them to costs. Such a comparison is essential to making good business decisions.

Further, RTC has not been able to ensure that SAMDA contractors performed contractual obligations because the final reviews were hindered by poor record keeping and numerous unofficial contract interpretations. As a result, the final reviews were delayed and RTC's costs to complete these reviews increased. To help prevent these problems from recurring, RTC SAMDA contract oversight managers could work with the SAMDA contractors to help them comply with existing SAMDA contract requirements and minimize the record keeping problems that hindered the final audit process.

Changes such as requiring cost benefit analyses for early terminations and complete final reviews are important for RTC to consider when other SAMDA contracts expire. Otherwise, future SAMDA contract expirations could result in unnecessary and excessive costs, and RTC would not know if the SAMDA contractors had performed their contractual obligations.

Recommendations

To ensure that RTC makes more informed decisions about expirations of SAMDA contracts, we recommend that the Deputy and Acting Chief Executive Officer of RTC revise RTC's procedures to require an assessment of the known costs and benefits associated with these contracts. Specifically, we recommend that the cost benefit analyses include

- an estimate of anticipated administrative savings or other benefits related to terminating SAMDA contracts,
- a fee comparison between the expiring contract and the replacement contract, and
- an analysis of the expenses associated with all unsold assets before waiving the retention provision.

To improve the OCOS final reviews of all SAMDA contracts and better ensure that the contractors have fulfilled their obligations, we recommend that the RTC Deputy and Acting Chief Executive Officer require SAMDA contract oversight managers to work with the SAMDA contractors to help them prepare, summarize, and reconcile their asset activity records before the final reviews.

RTC's Comments and Our Evaluation

In an April 14, 1994, letter commenting on a draft of this report, RTC said that it agrees with our recommendations. RTC also said that our recommendation on the cost benefit analyses has been implemented while noting several changes in the SAMDA program. RTC stated that because SAMDA contracts will no longer be terminated in advance of their scheduled expiration dates an estimation of administrative savings is no longer applicable. We agree. However, as RTC approaches sunset, it may again need to accelerate the expiration of SAMDA contracts. If this need occurs, RTC should have a provision for estimation of administrative savings in its cost benefit analysis.

RTC also noted that SAMDA expiration guidelines (issued in February 1994) require oversight managers to conduct an analysis of the cost of replacing contracts when placing the assets with a new contractor. RTC said that there are additional considerations, such as important program management objectives, that they believe can be strong mitigating factors to cost benefit determination. We do not disagree with RTC and believe that this information should be a part of the oversight managers' analysis.

RTC also said that the February 1994 expiration guidelines do not permit a waiver of the retention requirements. Specifically, RTC said that there shall be no release of any portion of the retention until after the final OCOS review is completed, all issues identified in the final review report have been resolved, and the SAMDA Program Office, the Office of Contracts, and Legal Division have agreed on the amount to be released. The guidelines also allow an exception to the retention rules for assets placed with the contractors on November 1, 1993, or later. We agree that these actions, if appropriately implemented, will help ensure that SAMDA contractors perform their contractual obligations.

RTC said that it agrees with our recommendation for preparing SAMDA contractor records prior to the final audit.

Because RTC was created as a mixed-ownership government corporation, it is not required by 31 U.S.C. 720 to submit a written statement on actions taken on these recommendations to the Senate Committee on Governmental Affairs, the House Committee on Government Operations, and the House and Senate Committees on Appropriations. However, we would appreciate receiving such a statement within 60 days of the date of this letter to assist us in our follow-up actions and allow us to keep the appropriate congressional committees informed of RTC activities.

We are sending this report to interested congressional committees and the Chairman of the Thrift Depositor Protection Oversight Board. We will also make copies available to others upon request.

The major contributors to this report are listed in appendix II. Please contact me on (202) 736-0479 if you have any questions concerning this report.

Sincerely yours,

Gaston L. Gianni

Gaston L. Gianni, Jr.
Associate Director, Government
Business Operations Issues

Comments From the Resolution Trust Corporation

RTC

RESOLUTION TRUST CORPORATION

Resolving The Crisis
Restoring The Confidence

April 14, 1994

Gaston L. Gianni, Jr.
Associate Director, Government
Business Operations Issues
General Accounting Office
Washington, DC

Dear Mr. Gianni:

Now on p. 13

The following is the response of the Office of SAMDA Program Management to the above-referenced report. Specifically, the response addresses the recommendations noted on pages 23 - 24 of the report as set forth below.

RECOMMENDATIONS:

To ensure that RTC makes more informed decisions about accelerating expirations of SAMDA contracts, it is recommended that the President and Chief Executive Officer of the RTC revise its procedures to require an assessment of the known costs and benefits associated with these contracts. Specifically, it is recommended that the cost benefit analyses include:

- an estimate of anticipated administrative savings or other benefits related to terminating SAMDA contracts;
- a fee comparison between the expiring contract and the replacement contract; and
- an analysis of the expenses associated with all unsold assets before waiving the retention provision for remaining assets.

It is further recommended that, in order to improve the final OCOS reviews of the SAMDA contracts and to ensure that the contractors have fulfilled their contractual obligations, RTC require its oversight managers to work with SAMDA contractors to help them prepare, summarize, and reconcile their asset activity records before the final reviews.

801 17th Street, N.W. Washington, D.C. 20434

Gaston L. Gianni, Jr.
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April 14, 1994

RESPONSE OF THE OFFICE OF SAMDA PROGRAM MANAGEMENT:

We agree with the GAO's recommendations. In terms of addressing the first two recommendations, the SAMDA Program notes the following:

- The estimation of administrative savings or other benefits is no longer applicable because SAMDA contracts are not being terminated in advance of their scheduled expiration date(s).

- Under RTC's expiration guidelines, the costs of replacing SAMDA contractors with other SAMDA/SAMA contractors, loan servicers, or other entities are to be included in the analysis conducted by the SAMDA Oversight Management staff in the field offices. However, we believe there are additional considerations which can be strong mitigating factors to a dollar-for-dollar cost/benefit determination. For example, there may be other important program management objectives such as MWOB considerations and the "track records" of the replacement contractors, particularly their ability in handling similar asset types. This is especially significant if the assets are complex or there are associated environmental hazards or outstanding litigation.

With respect to the GAO recommendation regarding the SAMDA Program's analysis of the unsold asset expenses before granting a waiver of the retention provision for any remaining assets, it should be noted that the contract Expiration Guidelines permit the retention provision to be waived.

In contrast, Chapter VIII of the Expiration Guidelines, entitled "Retention", provides a detailed discussion of the retention process for expiring SAMDA contractors. Specifically, there shall be no release of any portion of the retention until after the final OCOS review is completed, all issues identified in the final review report have been resolved, and the SAMDA Program Office, the Office of Contracts and the Legal Division have agreed on the amount to be released. <u>No releases of any portion of the retention at an earlier time are permitted</u> (emphasis included).

Accordingly, the procedures do <u>not</u> permit a waiver of the retention requirements. With respect to RTC claims against the retention, for both Versions 1 and 2 of the SAMDA contract, RTC will exercise its rights under the contract and deduct from the retention for all such assets remaining unsold as of the expiration date. The only allowable exception is that RTC will make no claim for reimbursement of incurred expenses relating to any asset unsold as of the contract expiration date if the asset was added to the contract on November 1, 1993 or later.

Gaston L. Gianni, Jr.
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Regarding the final recommendation in the GAO Draft Report concerning the RTC's requiring SAMDA contract oversight managers to work with SAMDA contractors to help them improve, summarize, and reconcile their asset activity records before the final reviews by OCOS are undertaken, both the Office of SAMDA Program Management and OCOS are in concurrence with this recommendation, as shown by the April 5, 1994 memorandum from OCOS to the SAMDA Program (attached).

Sincerely,

Thomas P. Horton
Vice President for
Asset Management and Sales

Attachment

RTC
RESOLUTION TRUST CORPORATION
Resolving The Crisis
Restoring The Confidence

April 5, 1994

MEMORANDUM TO: Thomas N. Hearn, Chief
Office of SAMDA Program Management

FROM: Gary W. Bowser, Deputy Director
Office of Contractor Oversight and Surveillance

SUBJECT: OCOS Response to GAO 247103, Resolution Trust Corporation: Better Analyses Needed Before Terminating Asset Management Contracts

The Office of Contractor Oversight and Surveillance (OCOS) has reviewed the General Accounting Offices's (GAO) draft of the above captioned report. The following is the GAO's recommendation applicable to OCOS reviews:

> "To improve the OCOS final reviews of all SAMDA contracts and better ensure that the contractors have fulfilled their obligations, we recommend that the RTC President and Chief Executive Officer require SAMDA contract oversight managers to work with SAMDA contractors to help them improve, summarize, and reconcile their asset activity records before the final reviews."

Based on OCOS's experience in performing expiration reviews of SAMDA contractors, OCOS supports the above recommendation that has been made by the GAO in their report, and has no additional comments to provide to the GAO.

801 17th Street, N.W. Washington, D.C. 20434

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